

DEC 18 2007

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CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BY

DEPUTY

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

KEVIN VANGINDEREN,

Plaintiff,

v.

CORNELL UNIVERSITY,

Defendant.

Case No. 07-CV-2045-BTM-JMA

Hon. Barry T. Moskowitz

PLAINTIFF'S RESPONSE TO  
DEFENDANT'S REPLY IN FURTHER  
SUPPORT OF SPECIAL MOTION TO  
STRIKE PLAINTIFF'S COMPLAINT  
PURSUANT TO SECTION 425.16  
OF THE CALIFORNIA CODE OF CIVIL  
PROCEDURE AND OBJECTION TO  
DEFENDANT'S REQUEST FOR  
JUDICIAL NOTICE OF ALL EXHIBITS

Hearing Date: December 21, 2007

Time: 11:00 a.m.

Place: Courtroom 15

The Defendant's conduct in the present matter has been nothing short of reprehensible. The Defendant does not wish to make a proper legal conclusion based upon an examination of the circumstances presented within the unauthenticated exhibits it has deluged this Court with, instead it has chosen to make a rabid effort to publicize the decades old sealed record of the Plaintiff and has compounded the damages for which it is liable. The Defendant apparently wishes to conduct a trial by exhibits alone, without testimony or cross examination. It has improperly presented a myriad of unauthenticated documents and now request that this Court take judicial notice of all without presenting a legitimate legal basis for such. The Defendant has not submitted any declaration to date which has authenticated any of these documents and has misstated the evidence presented. The Plaintiff objects to the admissibility of all the

1 Defendant's exhibits on grounds of relevance, hearsay, authenticity and the Best Evidence Rule  
2 and requests that judicial notice not be extended to the exhibits without proper substantiation.

3 The Defendant is misleading the Court when it states it has not conducted itself primarily  
4 in a manner which intends to publicize what has been a decades old sealed record. The  
5 Defendant Attorney Bert Deixler, personally informed and threatened the Plaintiff that a pursuit  
6 of this litigation would result in a massive dispersal of private information if it was not dropped.  
7 Subsequently, the Defendant decided to issue a press release to Justia.com (see Exhibit 6)  
8 describing the circumstances of the case in only a manner that the Defendant could imply, thus  
9 insuring that all its unsubstantiated and unauthenticated exhibits submitted to this Court would  
10 be immediately be broadcast online.

11 The Defendant proceeded immediately to submit as an exhibit to this Court, the original  
12 Accusatory Instrument brought against the Plaintiff (Defendant's Exhibit A) even with the  
13 knowledge that it was part of the then sealed record. (See Exhibit 5) There had been no order  
14 issued by any court to unseal these records on that date. As a result of the dismissal of all  
15 charges, the entire court file was sealed pursuant to New York's CPL §160.50, which requires all  
16 records "in any court" CPL §160.50(1)(c) to be sealed upon a dismissal. Since the Defendant  
17 has asserted that very code in its Motion to Unseal Record it is difficult for it to now state that it  
18 believed it was submitting a unsealed record at that time.

19 The Defendant has now taken the entire sealed record and submitted ever single  
20 document within it, relevant or not, as exhibits. Clearly these exhibits could never be presented  
21 as evidence at trial without authentication and subject to the scrutiny of this Court in regard to  
22 prejudice, hearsay, authentication and relevance. Indeed, even the worst interpretation of them  
23 could not find a scintilla of evidence beyond the possibility of seven charges involving the  
24 Plaintiff, while the libelous publication exhorts fifteen. The submission of these records as  
25 potential evidence has fit the Defendants ulterior motive, to publicize the twenty four year old  
26 sealed record in as broad a manner as could possibly be imagined.

27 The *Chronicle* report from March 17, 1983, is neither fair nor true. The article states  
28

1 that, "Department of Public Safety officials have charged Kevin G. Vanginderen of 603 Winston  
2 Court Apartments with third degree burglary in connection with 10 incidents of petit larceny and  
3 five burglaries on campus over a year." (Defendant's Exhibit B). The *Cornell Chronicle* article  
4 was false as the charge did not involve fifteen separate crimes as stated.

5 The Defendant's egregious conduct to date should not go rewarded. It has presented no  
6 basis to present this litigation to go forward. The argument that the Defendant has acted  
7 properly and is defending its right to publish everything in its catalog online is laughable. The  
8 Plaintiff respectfully requests the Motion to Strike be denied.

9  
10 Dated: December 18, 2007

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12 Kevin Vanginderen, Plaintiff in pro per  
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## Vanginderen v. Cornell University

Libel claim - claims university's digitization of campus newspaper constituted "re-publication" thus reviving claim that would ordinarily be extinguished over twenty years ago. Disclosure of private facts claim.

Tags: cornell, defamation, disclosure private facts, libel, library, privacy, publication, single publication rule

**Plaintiff:** Kevin Vanginderen

**Defendant:** Cornell University

**Case Number:** 3:2007cv02045

**Filed:** October 29, 2007

**Court:** California Southern District Court

**Office:** San Diego Office [ Court Info ]

**County:** San Diego

**Presiding Judge:** Judge Barry Ted Moskowitz

**Referring Judge:** Magistrate Judge Jan M. Adler

**Nature of Suit:** Torts - Injury - Assault, Libel, and Slander

**Cause:** 28:1441 Petition for Removal Libel,Assault,Slander

**Jurisdiction:** Diversity

**Jury Demanded By:** None

Date Filed	#	Document Text	Date Entered
October 29, 2007	<u>1</u>	NOTICE OF REMOVAL as to Kevin Vanginderen from San Diego Superior Court, case number 37-2007-00076496-CU-DF-SC. ( Filing fee \$ 350 Receipt number 143754), filed by Cornell University. t/w Notice of Party with Financial Interest.(pdc)(bar).	October 29, 2007
October 29, 2007	<u>2</u>	NOTICE of Party With Financial Interest by Cornell University. (vet)	October 30, 2007
October 30, 2007	<u>3</u>	CERTIFICATE OF SERVICE by Cornell University (Davidson, Clifford) Modified on 11/1/2007 - atty not associated w/ party and signature is in incorrect format, atty contacted (vet, ).	October 30, 2007
October 31, 2007	<u>4</u>	PRO HAC VICE APPOINTED: Charles S. Sims appearing for Defendant Cornell University (mkz) (mam).	October 31, 2007



## VERIFICATION

STATE OF CALIFORNIA, COUNTY OF San Diego

I have read the foregoing \_\_\_\_\_ and know its contents.

☐ CHECK APPLICABLE PARAGRAPHS

☐ I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

☐ I am ☐ an Officer ☐ a partner \_\_\_\_\_ ☐ a \_\_\_\_\_ of \_\_\_\_\_

a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. ☐ I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. ☐ The matters stated in the foregoing document are true of my own knowledge, except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

☐ I am one of the attorneys for \_\_\_\_\_ a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on \_\_\_\_\_, at \_\_\_\_\_, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Type or Print Name

Signature

## PROOF OF SERVICE

1013a (3) CCP Revised 5/1/88

STATE OF CALIFORNIA, COUNTY OF San Diego

I am employed in the county of San Diego, State of California.

I am over the age of 18 and not a party to the within action; my business address is: 637 Third Avenue, Suite E-1, Chula Vista, CA 91910

On, 12/18/07 I served the foregoing document described as A copy of the Plaintiff's Response to Defendant's Reply in Further Support of its Motion to Strike and Plaintiff's Objection to Defendant's Reequst for Judicial Notice on Defendant Attorney in this action

☐ by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list:

☒ by placing ☐ the original ☒ a true copy thereof enclosed in sealed envelopes addressed as follows:

Bert Deixler, Esq., Proskauer Rose LLP, 2049 Century Park East, Suite 3200, Los Angeles, CA 90067-3206

☒ BY MAIL

☒ \*I deposited such envelope in the mail at 637 Third Avenue, Chula Vista, California. The envelope was mailed with postage thereon fully prepaid.

☐ As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at \_\_\_\_\_ California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on \_\_\_\_\_, at \_\_\_\_\_, California.

☐ \*(BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

Executed on \_\_\_\_\_, at \_\_\_\_\_, California.

☒ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Juan Ramirez

Type or Print Name

Signature

\*(BY MAIL SIGNATURE MUST BE OF PERSON DEPOSITING ENVELOPE IN MAIL SLOT, BOX, OR BAG)

\*(FOR PERSONAL SERVICE SIGNATURE MUST BE THAT OF MESSENGER)

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